IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Bail Appl..No. 6488 of 2007()

(CRIME NO.552/07 OF PUTHENCRUZ POLICE STATION)

PETITIONERS/ACCUSED NO.2 AND 3:

1. **RATHEESH V.T.,S/O. THANKAPPAN,**
   AGED 22 YEARS, VELAKKATTIL HOUSE,
   POYIKARA MUGAL,
   VADAYAMBADI, AIKKARANAD.

2. **SABI P.R, S/O. RAVI, AGED 22 YEARS**
   PURAMASSERIL HOUSE,
   POYIKARA MUGAL,VADAYAMBADI.

BY ADV. SRI.K.V.SABU

RESPONDENT: COMPLAINANT:

CIRCLE INSPECTOR OF POLICE,
PUTHENCRUZ POLICE STATION
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J.

B.A.No.6488 of 2007

Dated this the 30th day of October 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 2 and 3. They face allegations along with the first accused, in a crime registered for the offence punishable under Section 380 I.P.C. The petitioners are not named in the F.I.R. The crux of the allegations against the petitioners is that the de facto complainant, along with the driver of a pick up van, was proceeding to a factory at Vadavukod junction. They did not know the way. They enquired with some persons. The three accused persons allegedly demanded an amount of Rs.100/- to direct them to their destination. The de facto complainant was not prepared to pay the amount. He proceeded. Later, the three accused persons followed the vehicle in a motor cycle. They stopped the vehicle. Two of them engaged the occupants of the vehicle in conversation. The third allegedly removed certain articles which was being carried in the pick up van. The miscreants ran away. Hearing the hue and cry, a local pastor came to the scene of the crime. He gave the name of one of these three accused. On the next morning, the de facto complainant went to the police station and lodged a complaint. He narrated in detail what was transpired. He narrated that he got the name of the said person from the said

pastor. Investigation was conducted. The first accused was arrested. He was interrogated. The identity of the petitioners was thus ascertained. They have been arrayed as accused now. They apprehend arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. All the three accused are autorickshaw drivers of the locality. The de facto complainant had allegedly come to that place and had wanted an autorickshaw to be hired to lead them to the destination. The fare demanded by the aurorickshaw driver was not fair. There was exchange of words. Totally false and vexatious allegations are being raised later on by the de facto complainant. The petitioners do not deserve to endure the trauma of arrest and detention. They may be granted anticipatory bail , submits the learned counsel for the petitioner.

3. The learned Public Prosecutor stoutly opposes the application. The learned Public Prosecutor submits that the sequence of events which have clearly come out reveal the despicable offence committed by the petitioners. The manner in which the complaint is made and the accused were identified do clearly show the truth of the allegations. There is nothing at the moment to conclude that the allegations are not true, correct or acceptable. There are no circumstances justifying or warranting the invocation of the

extraordinary equitable discretion under Section 438 Cr.P.C. The stolen articles have not been recovered yet. It is one of the two petitioners who had removed it. They will have to be arrested and interrogated. Attempts must be made to recover the stolen articles. The petitioners may be directed to co-operate with the investigating officers, submits the learned Public Prosecutor.

4. In the facts and circumstances to which I have already made brief reference, I am satisfied that there is merit in the opposition by the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007